IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 02 OF 2007

Dr. Rahul Warke. ... Petitioner.

V/s.

The Hongkong & Shanghai Banking Corporation Ltd. and Others. ... Respondents.

Mr. Janak Dwarkadas with Mr. F.F. D'Vitre with Mr. T.G. Vora with Mr. Tamhane and Ms. Virkar i/b. Mr. Tamhane & Co. for the Petitioner.

Mr. J.S. Saluja with Mr. Rekha Tawade i/b. M/s. M.M.V. Keni & Co. for Respondent 1.

Mr. S.R. Borulkar, P.P. with Mr. M.S. Mhambre for the State.

CORAM : SMT. RANJANA DESAI & ANOOP V. MOHTA,JJ.

DATED : 1st March, 2007.

P.C.

. In this petition filed under Articles 226 and 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, the petitioner seeks setting aside of the order dated 31.8.2006 passed by the Chief Metropolitan Magistrate, Esplanade Court, Mumbai in C.C. 146/Misc./2006 under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the said Act for short). Though both sides have made extensive submissions, it is not necessary for us to

deal with them in view of the fact that the parties have through their respective lawyers consented to the following order :-

(i) The petitioner shall file an appeal under Section 17 of the said Act before the Debt Recovery Tribunal (DRT for short) within 15 days from today.

(ii) In the peculiar facts and circumstances of the case, the D.R.T. shall decide the said appeal within a period of 8 weeks from the date of its filing. We record the statement made by the learned Counsel for the first respondent - bank that in the peculiar circumstances of the case considering the fact that the petitioner had bonafide filed this petition and followed this remedy, the first respondent - bank shall not raise any objection for condonation of delay, if any, in filing of the appeal before the D.R.T.

(iii) We direct any responsible officer of the 1st respondent bank to file the usual undertaking in D.R.T. within one week from the date of filing the appeal that the first respondent - bank shall not alienate, dispose of, encumber create any third party interest in the flat being Flat No.1802, Bhakti Dham Complex, Nahur Village, Mulund (West), Mumbai till the filing of appeal and two weeks thereafter. Further appropriate orders may be sought from the D.R.T. It will be open to the petitioner to make an application before the D.R.T. for restoration of possession. Needless to say that if such application is made, the D.R.T. will pass appropriate orders thereon in accordance with law.

(iv) Status-quo order passed by this Court on 4th January 2007 shall continue to operate for a further period of 2 weeks from today.

(v) We make it clear that on the question raised in this petition, we have not expressed any opinion and this order is restricted to its peculiar facts and circumstances.

3. The petition is disposed of in the above terms.

[SMT. RANJANA DESAI,J.]

[ANOOP V. MOHTA, J.]